

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION**

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Issacca Powell, et al.	)	
<b>PLAINTIFFS</b>	)	
	)	<b>No. 2:16-cv-2907-SHM-tmp</b>
	)	Consolidated with:
<b>v.</b>	)	<b>No. 2:17-cv-2015-SHM-dkv</b>
	)	<b>No. 2:17-cv-2795-SHM-tmp</b>
	)	
Bill Oldham, et al.	)	
<b>DEFENDANTS</b>	)	
	)	
	)	
Melvin Ingram, et al.	)	
<b>PLAINTIFFS</b>	)	
	)	
<b>v.</b>	)	
	)	
Robert Moore, et al.	)	
<b>DEFENDANTS</b>	)	

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**INGRAM PLAINTIFFS' MOTION AND MEMORANDUM TO  
ADOPT THEIR PROPOSED CONSOLIDATED COMPLAINT  
AND ALLOW FOURTEEN (14) DAYS TO RESPOND TO  
POWELL PLAINTIFFS' NOTICE/MOTION, ECF NO. 93**

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**I. MOTION TO ADOPT PROPOSED CONSOLIDATED COMPLAINT**

Plaintiffs *Melvin Ingram, et al.*, 2:17-cv-2795-SHM-tmp (“Ingram Plaintiffs”), by and through undersigned counsel, move the Court to adopt their ***Proposed Consolidated Complaint, (Attached as Exhibit A)***, as the deadline for filing said consolidated complaint is today, April 23, 2018. Additionally, as of this date, counsel for the *Powell et al.* Plaintiffs (“Powell Plaintiffs”), 2:16-cv-2907-SHM-tmp, unreasonably refuse to negotiate in furtherance of filing said consolidated complaint, and instead decided to pursue filing a notice, in effect a motion, for the Court to reconsider their motion to be appointed interim class counsel, ECF No.

93, 2:16-cv-2907-SHM-tmp. As a result, Ingram Plaintiffs respectfully request the Court adopt their proposed consolidated complaint, which is identical in virtually all material respects to the complaint proposed by Powell Plaintiffs with the exception that the three (3) named Plaintiffs selected by Ingrams' counsel are different than the two (2) Ingram plaintiffs selected by counsel for Powell. Respectfully to counsel for Powell, counsel for the currently thirty (30) named Ingram Plaintiffs are best able to evaluate the relative merits and ability of each Ingram Plaintiff and select those three (3) Plaintiffs most suitable to remain as named plaintiffs/class representatives on behalf of the Ingram Plaintiffs.

## **II. MEMORANDUM**

1. On March 9, 2018, this Court filed its Order of Consolidation, ECF. No. 89, 2:16-cv-2907, in the Powell case, ordering the respective Ingram and Powell cases to be consolidated, and the Ingram Plaintiffs and Powell Plaintiffs to file a consolidated complaint within thirty (30) days, or April 8, 2018.

2. Ingrams' counsel were only notified of the Court's Order dated March 9, 2018, on April 6, 2018, when Powell's counsel emailed a proposed consolidated complaint. The Court's Order dated March 9, 2018, was only filed in *Powell, et al.* and not in *Ingram, et al.* and therefore Ingram's counsel were not electronically notified.

3. Counsel for the Ingram Plaintiffs agreed almost verbatim with the proposed consolidated complaint drafted by counsel for the Powell Plaintiffs. However, counsel for the Ingram Plaintiffs disagreed with the proposed two (2) class representatives selected by counsel for Powell Plaintiffs from the thirty (30) currently named Ingram Plaintiffs.

4. Counsel for the Powell Plaintiffs selected two (2) proposed class representatives from the thirty (30) Ingram Plaintiffs without conferring with Ingram's counsel, and solely on

the basis of the facts stated in the Ingram Complaint. Respectfully to counsel for the Powell Plaintiffs, they are without the benefit of access to these plaintiffs, have no knowledge of their respective reliability, personal or criminal histories, relationships with counsel, mental or emotional health, communication skills, or any other factors material to the selection of the most appropriate class representative.

5. On April 6, 2018, Ingram's counsel and Powell's counsel began discussions regarding the forthcoming consolidated complaint. Counsel for the Powell Plaintiffs conveyed their concerns about proceeding forward with all of the thirty (30) named Ingram Plaintiffs and their desire to drastically reduce the number of said plaintiffs.

6. On April 7, 2018, realizing they needed additional time to sort through the fact patterns of all the Ingram Plaintiffs, review intake notes, contact said Plaintiffs to confirm their continued interest, location, continued competence and mortality, and confer internally to select the best suited named Plaintiffs - Ingram's counsel filed their *Motion for Extension of Time to File Consolidated Complaint*, ECF No. 91, 2:16-cv-02907-SHM-tmp. The Motion was subsequently granted; allowing the Ingram and Powell Plaintiffs an additional two (2) weeks to file said consolidated complaint, or April 23, 2018.

7. After performing the due diligence tasks noted above in Paragraph 6, counsel for the Ingram Plaintiffs contacted counsel for the Powell Plaintiffs and arranged for a telephonic conference on April 20, 2018. At this telephonic conference, Ingram's counsel proposed reducing their thirty (30) named plaintiffs to four (4). However, Powell's counsel vigorously opposed the proposed number of plaintiffs and insisted Ingram's counsel agree to the two (2) plaintiffs it previously proposed or they would seek the intervention of this Court and again pursue being named as Interim Class Counsel. Counsel for Ingram requested the weekend to

discuss the ultimatum made by counsel for Powell.

8. On April 23, 2018, in a good faith attempt to re-engage Powell's counsel in discussions, Ingram's counsel proposed dropping one more of their proposed four (4) named plaintiffs to three (3). However, Powell's counsel made no response and instead filed a document entitled *Powell Plaintiffs' Notice of Their Request for the Court to Consider and Rule on Their Previously Filed Rule 23(g)(3) Motion for Appointment of Interim Class Counsel in Order that, Inter Alia, a Consolidated Class Complaint may be Filed*, ECF No. 93. Regretfully, this represents the sole issue of contention and is apparently deemed sufficient by counsel for Powell Plaintiffs to ignore this Court's Order of Consolidation, ECF. No. 89, 2:16-cv-2907, and instead proceed with its said *Notice*.

9. Further, the document referenced in Paragraph 8, above, purports to seek action and/or relief from the Court. As such, Ingram Plaintiffs' request the Court treat it as a motion and ask for fourteen (14) days to file a thorough response, pursuant to Local Rule 7.2(a)(2).

10. The proposed consolidated complaint attached by the Ingram Plaintiffs is substantially similar to the proposed consolidated complaint by Powells' counsel, differing only in the addition of the three (3) Ingram named Plaintiffs; along with Paragraphs 19 and 20, p. 6-7, which include statements regarding Ingram's twenty-seven (27) other named plaintiffs remaining as putative class members; and Paragraph 90, p. 33, a concise statement of the qualifications of counsel for the Ingram Plaintiffs.

11. The desire to obtain lead class counsel status, and the resulting decision-making power, and economic benefits, has interfered with the ability of counsel for the Powell Plaintiffs to effectively and appropriately negotiate with counsel for the Ingram Plaintiffs and thus it is in the best interests of the consolidated Ingram and Powell Plaintiffs, and the putative

class as a whole, for this Honorable Court to direct the filing of the attached proposed consolidated complaint in compliance with its Order of Consolidation, ECF. No. 89, 2:16-cv-2907.

WHEREFORE, PREMISES CONSIDERED, counsel for the Ingram Plaintiffs respectfully request this Honorable Court adopt their proposed consolidated complaint, attached as ***Exhibit A***, and allow counsel for the Ingram Plaintiffs an additional fourteen (14) days to consider its response to the Powell Plaintiffs' "Notice," or de facto Motion, requesting to be named as Interim Class Counsel, ECF No. 93.

**Respectfully submitted,**

s/Daniel Lofton

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### **CERTIFICATE OF CONSULTATION**

On April 20, 2017, counsel for the Ingram Plaintiffs and counsel for the Powell Plaintiffs conducted a teleconference regarding the filing of a joint consolidated complaint. On April 23, 2018, counsel for Powell Plaintiffs decided, without consultation, to request the Court name it as interim class counsel, rather than comply with this Court's *Order of Consolidation*, ECF. No. 89, 2:16-cv-2907. As a result, further consultation with counsel for Powell Plaintiffs regarding this motion would be futile.

s/Matt Gulotta

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the preceding document was forwarded by electronic means via the Court's electronic filing system to all parties of record.

s/Matt Gulotta